HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 1759 (S/S) 2001
(Old no. 35949 of 1998)

Meharban Singh S/o Late Sri Shyam Singh Rawat,
R/o village Shogna, Post Dandauli,
District Rudraprayag. ----Petitioner.

Vs.

1. Homeopathic medical Officer, Chamoli,
2. State of U.P.,
3. Pharmacist, State Homeopathic Hospital,
   Manipur, Chamoli,
   Rudraprayag. ----Respondents.

Sri G.S. Negi, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri G.S. Negi, learned counsel for the petitioner and learned Standing Counsel for respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of certiorari quashing the order dated 17.09.1998 and the order dated 15.10.1998. Vide order dated 17 September 1998 the Medical Officer Homeopathy, District Chamoli has cancelled the appointment of petitioner on the post of Class IV. The order dated 15.10.1998 is the order passed by the Pharmacist In-charge Homeopathic Hospital, Manipur (Chamoli) by which he has communicated the order passed by the Medical Officer Homeopathy, Chamoli date a17 September 1998.

The case of the petitioner is that the petitioner was appointed as Class IV employee in the pay-scale of 2550-3200 in the State Homeopathic Hospital vide order dated 02.09.1998 passed by District Homeopathy Medical Officer, Chamoli. In the

appointment letter which is annexure-1 to the writ petition, it is required that prior to joining the duties, the petitioner shall submit the following documents:-

i. Attested Photocopies of the Educational Qualifications,
ii. Certificate relating to date of birth,
iii. Fitness certificate from competent authority,
iv. Character certificate issued by Gazetted Officer,
v. Certificate of integrity,
vi. Certificate relating to marital status.

In pursuance to the appointment letter dated 02.09.1998, the petitioner approached the Pharmacist in-charge Govt. Homeopathic Hospital, Manipur, Chamoli (Now in district Rudraprayag) where he was posted and the Pharmacist, after receiving all the documents permitted him to join on 04.09.1998 and sent a letter on 05.09.1998 to the District Medial Officer Homeopathy district Chamoli that the petitioner has been permitted to join in pursuance of the order dated 02.09.1998 passed by the District Medial Officer Homeopathy district Chamoli. The said documents are annexed as annexure nos. 2 & 3 to the writ petition.

ON 17th September 1998 to the utter surprise of the petitioner, the District Medial Officer Homeopathy district Chamoli issued a letter that since the petitioner has not submitted his certificates as required, his appointment is cancelled. It is against this cancellation order; the petitioner approached this Court by means of this wit petition.

Learned counsel for the petitioner has submitted that prior to the cancellation of the appointment of the petitioner, he has not been afforded any opportunity of hearing. Had he been given opportunity he would have explained the District Medial Officer Homeopathy district Chamoli that he has already submitted all the relevant documents before the Pharmacist in-charge and

after receiving all the these documents he has been permitted to join.

A short counter affidavit has been filed by respondent no. 1. In para-5 of the counter affidavit it is stated that the fitness certificate as required under item no. 3 mentioned in the appointment letter was not submitted which amounts to non compliance of the requirements of the order of appointment that is why the order of appointment has been cancelled. In para-6, the stand taken by the respondent is that the appointment made by the District Medial Officer Homeopathy district Chamoli was without prior approval of the Government.

Counsel for the respondent also drew my attention to the G.O. dated 8th November 19996 by which the District Medial Officer Homeopathy district Chamoli has been empowered to appoint Class IV employee subject to the approval of the Government.

Learned Standing Counsel has submitted that since the appointment of the petitioner was made by the District Medial Officer Homeopathy without approval of the Government and, as such, the appointment has rightly been cancelled. I do not find any force in the submission of the learned Standing Counsel. From the perusal of the order of cancellation of appointment there is no whisper in the cancellation letter that the appointment is being cancelled on the ground that the same was issued without obtaining prior approval of the Government. On the contrary, the grounds which have been taken in passing of the impugned order is that since the petitioner has not submitted certificates which were required to be submitted before joining the duties, as such, the appointment is being cancelled.

In apra-5 of the short counter affidavit, the respondent has submitted that the petitioner did not submit his fitness

certificate as required under item no. 3 mentioned in the appointment order; whereas in the order impugned it is stated that the petitioenr has not submitted all the required certificates. In the appointment letter it is stated that prior to joining duties, the petitioenr shall submit all the required documents. The petitioner was permitted to join his duties by the Pharmacist in pursuance to the appointment order, hence it will be deemed that he was permitted to join, after obtaining all the required documents. Further, the petitioner ahs also filed all the required documents including the fitness certificate issued to him by the competent authority on 03.09.1998 in the present writ petition. There is no occasion to disbelieve the petitioner that he will submit all the certificates except the fitness certificate, which he has already got from competent authority prior to joining of his services. Even assuming that all other certificates were submitted by the petitioner except the fitness certificate the natural justice demands that the petitioner should have been given a notice to submit the same within a particular period.

Against the cancellation order, the petitioner has already got stay order from this Court and he is still continuing on the post.

For the reasons stated above, the writ petition is allowed. The impugned orders dated 17.09.1998 and 15.10.1998 are hereby quashed. No order as to costs.

(M.M. Ghildiyal, J.)

July 19, 2005:
NCM: